

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4231 of 1988

WITH

SPECIAL CIVIL APPLICATION No 4276 of 1988

WITH

SPECIAL CIVIL APPLICATION No 3980 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

POONAMCHAND JETHALAL & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR RK MISHRA for Petitioners in all Sp.C.As.

MR VB GHARANIA for Respondents in all Sp.C.As.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/04/97

ORAL JUDGMENT

As all these Special Civil Applications proceed on the common facts and grounds, the same are being taken up for hearing together and further are being disposed of by this common order.

2. All these petitions are directed against the purported action of reversion of the petitioners from the post of workcharge clerks to daily rated employees on the ground that the petitioners have been absorbed on the post of workcharge employees and placed in the grade of Rs.950-1500 pursuant to the Government resolution No.DIE-1673-14G dated 14.7.73 on having completed service in the range of 8 to 9 years, and further on the ground that they have legal right to the post and other service benefits.

3. The facts which are not in dispute are that the petitioners in these Special Civil Applications, except petitioner No.13 in Special Civil Application No.4276 of 1988 and petitioner No.2 in Special Civil Application No.3980 of 1988 were appointed as daily wagers and later on, on availability of temporary work in scarcity they were sent for that work as workcharge employees giving them benefit of regular pay scale. That was temporary arrangement made. After the completion of relief work, they have been reverted back to their original status of daily wagers, which gave rise to the cause of action to file these Special Civil Applications before this Court.

4. Heard learned counsel for the parties. The learned counsel for the petitioners contended that it is a case of reversion of the petitioners from the status of workcharge employees getting regular pay scale to the status of daily wagers and as such, it is bad in law as it has been done without any notice or opportunity of hearing to them. It has next been contended that many of the daily wagers junior to the petitioners have been taken in workcharged establishment in the regular pay scale of corresponding post whereas the petitioners were not treated similarly. However, the learned counsel for the petitioners admitted that all the petitioners now have been taken in the workcharged establishment in the regular pay scale, but the dispute is that these petitioners have been taken later in point of time and as such, they are getting the pay less than the persons who are juniors.

5. On the other hand, the learned counsel for the respondents contended that the petitioners were taken in the regular pay scale as there was a temporary creation of post in scarcity work and on completion of that work, they have rightly been sent to their original status and as such, it cannot be said to be a case of reversion and no opportunity of hearing was required to be given. It has further been contended that the petitioners were taken in workcharged establishment and given the regular

pay scale and therefore nothing now survives in these Special Civil Applications.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. So far as the grievance of the petitioners that their juniors were given the benefits of the pay scale by taking them in workcharged establishment earlier to them is concerned, it is submitted by the learned counsel for the respondents that this matter is still open to the petitioners to file representation before the Superintending Engineer, Irrigation and Mechanical Circle No.2, Ahmedabad. From the documents which have been filed on record, it is not case where the petitioners have been absorbed in the workcharged establishment in the regular pay scale. It is true that in the order under which the petitioners were sent for scarcity relief work, the word 'absorption' is mentioned, but the order as a whole has to be considered and secondly the substance of the matter has to be taken. It was a temporary creation of the post for scarcity relief work and naturally taking into consideration the fact that these persons were working on daily wages for years together, they have been given benefit by sending them to scarcity work in the regular pay scale. The learned counsel for the petitioners has made all of his submissions only on the basis of use of word 'absorption' in the order, which is not correct reading of the order. The learned counsel for the petitioners does not dispute that these persons were sent under the order, which is stated to be absorption order of the petitioners, for scarcity relief work and that work has been completed. The scarcity relief work is specifically sanctioned work and it has its own tenure. It is, in fact a temporary creation of work and after completion thereof, the petitioners have to be sent back to their original position. So no notice or opportunity of hearing was required to be given to the petitioners and as such, the contention made that principles of natural justice have been violated is devoid of any substance.

7. The learned counsel for the petitioners admits that the workmen-petitioners in all these Special Civil Applications have been taken in the workcharged establishment and they have been given regular pay scale. So the dispute is only of the date from which they should have been taken in workcharged establishment in the regular pay scale. This is a question of fact on which this Court sitting under Article 226 of the Constitution of India, will not make an inquiry. Moreover, these are the matters to be first taken by the workmen-petitioners

before the authority, or by the Union before the Labour Court. However, in view of the fact that the respondents' counsel very fairly submitted that the matter is still open for consideration in case the petitioners make a representation, I do not consider it to be necessary to go on the merits for which, otherwise also, necessary factual foundation has not been provided by the petitioners. It is a matter of seniority and juniority where the petitioners are claiming benefits on the basis of their continuous length of services qua the persons having less continuous service and the same can be effectively gone into by the Department only.

8. In the result, all these Special Civil Applications are disposed of in terms that it shall be open to the workmen-petitioners to make a representation to the concerned Superintending Engineer in respect of their grievance of giving them deemed date of taking them in workcharged establishment in regular pay scale with consequential benefits, within a period of one month from the date of receipt of certified copy of this order and in case such representation is made by the workmen-petitioners, the concerned authority shall consider the same within a period of three months thereafter. In case the grievance of the petitioners are accepted, they shall be entitled for all consequential benefits following therefrom. However, in case the grievance of the petitioners are not accepted fully or in part, it is expected of the Superintending Engineer concerned to pass a reasoned order and a copy of the same may be sent to the petitioners individually by registered post. It is however open to the Workers' Union, who is party to these petitions to raise industrial dispute in this matter, if it so desires. These Special Civil Applications and Rule in all these Special Civil Applications stand disposed of in aforesaid terms. No order as to costs.

.....

(sunil)